

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 7

Pretrial Proceedings in Delinquency Cases

7.4 Identification Procedures

C. Constitutional Requirements

Right to counsel.

Near the top of page 143, replace the first full sentence on this page with the following text:

A defendant's right to counsel at corporeal identifications attaches at the time adversarial judicial criminal proceedings are initiated against that defendant. *People v Hickman*, ___ Mich ___, ___ (2004). In *Hickman*, the challenged identification took place "on-the-scene" and before the initiation of adversarial proceedings; therefore, counsel was not required. The Michigan Supreme Court's decision in *Hickman* overruled the Court's previous decision in *People v Anderson*, 389 Mich 155 (1973), where "the right to counsel was extended to all pretrial corporeal identifications, including those occurring before the initiation of adversarial proceedings." *Hickman, supra*, ___ Mich at ___. The *Hickman* Court acknowledged that the *Anderson* rule represented the "policy preferences" of that Court but that the rule lacked any foundational basis in state or federal constitutional provision. Both the federal and state constitutional provisions on which a criminal defendant's right to counsel are based are prefaced by the phrase, "In all criminal prosecutions," Said the *Hickman* Court:

"[I]t is now beyond question that, for federal Sixth Amendment purposes, the right to counsel attaches only at or after the initiation of adversarial judicial proceedings.

This conclusion is also consistent with our state constitutional provision, Const 1963, art 1, § 20[.]" *Hickman, supra*, ___ Mich at ___.

The Court added that “identifications conducted before the initiation of adversarial judicial criminal proceedings could still be challenged” on the basis that a defendant’s due process rights were violated by the identification’s undue suggestiveness or by other factors unfairly prejudicial to the defendant.

CHAPTER 7

Pretrial Proceedings in Delinquency Cases

7.6 Selected Search and Seizure Issues

Application of constitutional protections to minors.

Near the bottom of page 154, insert the following text immediately before the boldface text reading “**Burden of proof**”:

In *People v Goldston*, ___ Mich ___, ___ (2004), the Michigan Supreme Court adopted the good-faith exception to the exclusionary rule established in *United States v Leon*, 468 US 897 (1984). The good-faith exception provides that if the police’s good-faith reliance on a search warrant is objectively reasonable, the exclusionary rule will not bar the admission of the evidence even if the warrant is later found to be invalid.

CHAPTER 10

Juvenile Dispositions

10.12 Restitution

I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

Triple restitution for serious bodily impairment or death of a victim.

At the top of page 244, delete the first two paragraphs and the July 2003 update (discussing *Kreiner v Fischer*) and insert the following text:

According to the Michigan Court of Appeals in *People v Thomas*, ___ Mich App ___, ___ (2004), the phrase “serious impairment of a body function” as it is defined in the no-fault act, MCL 500.3135(1), is not relevant to a court’s analysis of an injury resulting from a defendant’s violation of MCL 750.81d(3)—resisting arrest and causing the police officer serious bodily impairment. The no-fault act’s definition of the phrase and case law based on that interpretation are not applicable to circumstances like those in *Thomas* because MCL 750.81d(7)(c) expressly provides that “serious impairment of a body function” is to be defined as the phrase is defined in MCL 257.58c. *Thomas, supra*, ___ Mich App at ___.

The definition of “serious impairment of a body function” in MCL 257.58c is substantially similar to the definitions of this term in the provisions of the CVRA authorizing triple restitution for victims who sustain a serious bodily impairment as a result of an offender’s criminal conduct. See MCL 780.766(5), 780.794(5), and 780.826(5). In *Thomas*, the Court of Appeals rejected both parties’ assertion that the no-fault statute should be considered “in pari materia” with the definition in MCL 257.58c. The *Thomas* Court explained that the doctrine of “in pari materia” was inapplicable because

“[t]he two statutes [MCL 257.58c and 500.3135(1)] do not relate to the same subject or share a common purpose. The no-fault act provides a system of civil compensation and liability for automobile accidents; the statute at issue [in *Thomas*] prohibits and criminalizes assaultive behavior while resisting an arrest.” *Thomas, supra*, ___ Mich App at ___.

The Court also noted that a court may not look outside the statute at issue when, as in *Thomas*, the definitions of terms relevant to the dispute are provided in the statute itself. Thus, in *Thomas*, it was improper to consider the no-fault act’s definition of “serious impairment of a body function” because MCL 750.81d(7) provided the definition of the phrase by direct reference to MCL 257.58c. Similarly, the statutory provisions governing triple restitution in cases involving serious bodily impairment under the CVRA contain a

definition of the phrase so that reference to the no-fault act's definition is improper.

Because the definition of "serious bodily impairment" used in MCL 750.81d(7)—the phrase as defined in MCL 257.58c—is substantially similar to the definitions used throughout the CVRA, the *Thomas* Court's disposition of the issue is relevant to cases under the CVRA involving the interpretation of "serious bodily impairment." The CVRA's definitions of the phrase are prefaced with "serious impairment of a body function includes, but is not limited to" the specific list of injuries included in the definitions. According to the *Thomas* Court:

"[T]o determine whether injuries to the officer here constitute serious impairments of a body function under the statute, we consider their similarity to injuries within the statutory list."
Thomas, supra, ___ Mich App at ___.

The same analysis applies to a determination of serious bodily impairment under the triple restitution provisions of the CVRA.

CHAPTER 23

Selected Issues Regarding Imposition of Adult Sentence

23.4 Alternative Sentences for Major Controlled Substance Offenses

Near the bottom of page 475, immediately before the last paragraph insert the following text:

*2002 PA 665 became effective March 1, 2003.

The ameliorative effects of 2002 PA 665's amendment to MCL 333.7401(3) do not apply retroactively* where the amendments did not simply reduce the penalties possible for conduct identical under both the amended and preamended versions. *People v Doxey*, ___ Mich App ___, ___ (2004). As amended, MCL 333.7401(3) does not proscribe the same conduct as the preamended version; rather, 2002 PA 665 altered the quantities of controlled substances involved in each statutory provision so that "new" crimes of delivery were created at the same time that mandatory consecutive sentences were eliminated in specific situations. *Doxey, supra* at ___.